

1984 WL 249830 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 14, 1984

*1 Honorable John I. Rogers, III
House of Representatives
P. O. Box 11867
Columbia, South Carolina 29211

Dear Representative Regers:

You have requested an opinion ¹ as to whether or not South Carolina Code § 38-35-980 (1976, as amended) is applicable to the group health insurance plan made available by the State of South Carolina to eligible employees and their dependents. ² For the reasons set out hereinafter, it is the opinion of this Office that § 38-35-980 does not apply to the State's present group health insurance plan.

South Carolina Code § 38-35-980 (1976, as amended) provides as follows:

Any policy or contract of group accident, group health or group accident and health insurance may provide for readjustment of the rate of premium based on the experience thereunder at the end of the first year or of any subsequent year of insurance thereunder, and such readjustment may be made retroactive only for such policy year. Any refund under any plan for readjustment of the rate of premium based on the experience under group policies and any dividend paid under such policies may be used to reduce the employer's contribution to group insurance for the employees of the employer and the excess over such contribution by the employer shall be applied by the employer for the sole benefit of the employees.

The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent wherever possible. [Bankers Trust of South Carolina v. Bruce](#), 275 S.C. 35, 267 S.E. 2d 424 (1980); [Belk v. Nationwide Mut. Ins. Co.](#), 271 S.C. 24, 244 S.E. 2d 744 (1978). Where the language of a statute is clear and unambiguous one must give effect to the clear meaning of the statute's language. [Duckworth v. Cameron](#), 270 S.C. 647, 244 S.E. 2d 217 (1978); [Insurance Services Office v. South Carolina Ins. Commission](#), 267 S.C. 54, 226 S.E. 2d 33 (1976).

Section 38-35-980 permits, but does not mandate, a provision for retroactive adjustment of premium rates to be included in group health insurance policies or contracts. This statute further provides that if a refund is appropriate because of the readjustment of the premium rate, then the refund 'may' be used to reduce the employer's contribution ³ to the group insurance. Once the employer is reimbursed for his contribution, then any excess over the employer's contribution 'shall' be applied 'for the sole benefit of the employees.'

The language of § 38-35-980 is clear. To trigger the operation of the statute there must first be a retroactive readjustment of the premium rate.

Under the present State group health insurance plan, a premium rate is established for each policy year. ⁴ The premium rate may be adjusted upward or downward for each ensuing policy year; however, any premium rate adjustment will not have any retroactive effect. Since there can be no retroactive premium adjustment, there can be no triggering of § 38-35-980. Therefore, § 38-35-980 does not affect the State group health insurance plan.

*2 It is also significant that the State of South Carolina is not designated as an 'employer' pursuant to South Carolina Code § 38-35-920. That section provides in part as follows:

The term 'employer' as used herein may be deemed to include any municipal corporation or the proper officers, as such, of any unincorporated municipality or any department of such corporation or municipality determined by conditions pertaining to the employment.

The omission of the State as an 'employer' (especially when municipal corporations are expressly included) makes out a persuasive argument that the State was meant to be excluded as an employer. 'It is a well-settled principle of statutory construction that the expression of one thing excludes others not expressed.' [Jones v. H. D. & J. K. Crosswell](#), 60 F. 2d 827, 828 (E.D.S.C. 1932). While the doctrine of expressio unius est exclusio alterius⁵ does not control this situation, the logic behind the maxim is persuasive.

It is a widely accepted rule of statutory construction that general words in a statute will not ordinarily be construed to include the State or political subdivisions thereof. [United States v. United Mine Workers of America](#), 330 U.S. 258, 275, 91 L. Ed. 884, 903 (1947); [United States v. Cooper Corp.](#), 312 U.S. 600, 604, 85 L. Ed. 1071, 1074 (1941); [Brooks v. One Motor Bus, Etc.](#), 190 S.C. 379, 3 S.E. 2d 42, 44 (1939). A reading of Article 9 of Chapter 35 of Title 38 reveals no indication that the Legislature meant that Article to apply to the State.

For the foregoing reasons, it is our opinion that South Carolina Code § 38-35-980 does not apply to the present group health insurance plan provided by the State of South Carolina.

Sincerely,

Charles W. Gambrell, Jr.
Assistant Attorney General

Footnotes

- 1 This request was apparently triggered because of a footnote in an earlier letter opinion of this Office to Scott R. Inkley, Jr. dated January 30, 1984. Nothing in the instant opinion effects the reasoning or conclusions of the January 30, 1984 opinion.
- 2 The State group health insurance plan is a self-insurance plan of the State of South Carolina promulgated by Section 14 of the 1983-84 Appropriations Act. This statutory authority provides for the creation of a fund (created by employer and employee contributions) which is utilized to pay claims and to pay for the cost of administering the plan. The State has contracted with Blue Cross and Blue Shield of South Carolina to administer the plan.
- 3 This contribution would include any premiums paid by the employer plus any expenses incurred by the employer to administer the group insurance plan.
- 4 The policy year coincides with the State's fiscal year.
- 5 The expression of one is the exclusion of another. See, [Gattis v. Chavez](#), 413 F. Supp. 33 (D.C.S.C. 1976); [Home Building & Loan Ass'n v. City of Spartanburg](#), 185 S.C. 313, 194 S.E. 139 (1938).

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